

SPC&B Update

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A recent decision by the Court of Appeals for the Federal Circuit (CAFC) broadens the universe of people who can be held liable for duties and penalties in a case involving errors of omission or commission in Customs declarations.

In United States v. Trek Leather, Inc., the Court discussed a penalty action brought against the president of an importing company. Although the president was not the importer of record, nor did he submit the entry, he directed the customs broker to make the entry in his company's name and provided the broker with the documents needed to make the entry. In view of this, the CAFC determined that "he did everything short of the final step of preparing the CBP Form 7501s and submitting them and other required papers to make formal entry," and, as a result, was liable as a "person" who "introduced" the merchandise into U.S. commerce. The Court also emphasized that applying the penalty statute to the president did not require piercing of the corporate veil and also was not due to his status as a prominent officer or owner.

While the extent to which Customs will utilize the holding in Trek in the future is unclear, there is concern that any person who participates in the transmission of information which they know or should know is false (*i.e.*, the failure to exercise reasonable care), could be personally liable for duties and penalties. Accordingly, it reinforces the need for a vigorous compliance program that incorporates risk assessment, interdepartmental communication, and transaction testing.

Anyone with concerns about their Customs compliance program should contact Gail Cumins at gcumins@spcblaw.com, Donna Shira at dshira@spcblaw.com, or Alli Baron at abaron@spcblaw.com, or call us at 212-425-0055.

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